

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ABC RUG & CARPET CLEANING :  
SERVICE, INC., RUG RENOVATING CO.,  
INC. and A.B.C. :  
CARPET CO., INC., : No. 08 CIV 5737 (RMB)

Plaintiffs

-against-

ABC RUG CLEANERS, INC., ABC RUG : ANSWER  
CLEANERS.COM, ABC CARPET &  
UPHOLSTERY CARE, INC. and NY :  
MANHATTAN MANAGEMENT, INC., :  
Defendants.

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Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT, INC., by its attorneys Jacobson & Colfin, P.C., as and for its Answer to the Plaintiffs' Complaint state as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.
4. Admit the allegations contained in paragraph 4.
5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.
6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.
7. Admit the allegations contained in paragraph 7 to the extent that NY Manhattan Management, Inc. is a corporation organized under the laws of the State of New

York. NY Manhattan Management no longer maintains a place of business.

8. Deny the allegations contained in paragraph 8.
9. Deny the allegations contained in paragraph 9.
10. Deny the allegations contained in paragraph 10.
11. Deny the allegations contained in paragraph 11.
12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.
13. Deny the allegations contained in paragraph 13 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 as pertains to the other defendants.
14. Deny knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 14.
15. Deny knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 15.
16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.
17. Deny the allegations contained in paragraph 17.
18. Deny the allegations contained in paragraph 18.
19. Deny knowledge sufficient to form a belief as to the truth of the allegations alleged in paragraph 19.
20. Admit the allegations contained in paragraph 20.
21. Deny the allegations contained in paragraph 21.
22. Deny the allegations contained in paragraph 22.
23. Deny knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 23.
24. Deny knowledge or information sufficient to form a belief as to the truth of the

- allegations contained in paragraph 24.
25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25.
  26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26.
  27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.
  28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.
  29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.
  30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.
  31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.
  32. Admit the allegations contained in paragraph 32 to the extent that the ABC CARPET & HOME mark is registered for retail store services.
  33. Admit the allegations contained in paragraph 33 to the extent that the ABC CARPET & HOME mark is registered for retail store services.
  34. Admit the allegations contained in paragraph 34 to the extent that the ABC CARPET & HOME mark is registered for retail store services.
  35. Admit the allegations contained in paragraph 35.
  36. Deny the allegations contained in paragraph 36.
  37. Deny knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 37.
  38. Deny that the defendant ABC Rug Cleaners ever advertised in any yellow pages.
  39. Deny the allegations contained in paragraph 39.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.
41. Deny the allegations contained in paragraph 41.
42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.
43. Deny the allegations contained in paragraph 43.
44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44.
45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45.
46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46.
47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47.
48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48.
49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49.
50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50.
51. Deny the allegations contained in paragraph 51.
52. Deny the allegations contained in paragraph 52.
53. Deny the allegations contained in paragraph 53.
54. Deny the allegations contained in paragraph 54 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 as pertains to the other defendants.

55. Deny the allegations contained in paragraph 55 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 as pertains to the other defendants.
56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations alleged in paragraph 56.
57. Repeat and reallege the answers to paragraphs 1 through 56 as if fully set forth.
58. Deny the allegations contained in paragraph 58.
59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59.
60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60.
61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61.
62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62.
63. Deny the allegations contained in paragraph 63 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 as pertains to the other defendants.
64. Deny the allegations contained in paragraph 64 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 as pertains to the other defendants.
65. Deny the allegations contained in paragraph 65 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in

paragraph 65 as pertains to the other defendants.

66. Paragraph 66 is a request for relief and not an allegation.

67. Deny the allegations contained in paragraph 67 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 as pertains to the other defendants.

68. Paragraph 68 is a statement of intent and not an allegation.

69. Repeat and reallege the answers to paragraphs 1- 68 as if fully set forth herein.

70. Deny the allegations contained in paragraph 70 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 as pertains to the other defendants.

71. Deny the allegations contained in paragraph 71 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 as pertains to the other defendants.

72. Paragraph 72 is a request for relief and not an allegation.

73. Deny the allegations contained in paragraph 73 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 as pertains to the other defendants.

74. Paragraph 74 is a statement of intent and not an allegation.

75. Repeat and reallege the answers to paragraphs 1- 74 as if fully set forth herein.

76. Deny the allegations contained in paragraph 76 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 as pertains to the other defendants.

77. Deny the allegations contained in paragraph 77 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 as pertains to the other defendants.
78. Paragraph 78 is a request for relief and not an allegation.
79. Deny the allegations contained in paragraph 79 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 as pertains to the other defendants.
80. Paragraph 80 is a statement of intent and not an allegation.
81. Repeat and reallege the answers to paragraphs 1- 80 as if fully set forth herein.
82. Deny the allegations contained in paragraph 82 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 as pertains to the other defendants.
83. Deny the allegations contained in paragraph 83 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 as pertains to the other defendants.
84. Deny the allegations contained in paragraph 84 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 as pertains to the other defendants.
85. Deny the allegations contained in paragraph 85 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 as pertains to the other defendants.

86. Paragraph 86 is a request for relief and not an allegation.
87. Paragraph 87 is a statement of intent and not an allegation.
88. Repeat and reallege the answers to paragraphs 1- 87 as if fully set forth herein.
89. Deny the allegations contained in paragraph 89 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 as pertains to the other defendants.
90. Deny the allegations contained in paragraph 90 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 as pertains to the other defendants.
91. Deny the allegations contained in paragraph 91 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 as pertains to the other defendants.
92. Paragraph 92 is a request for relief and not an allegation.
93. Paragraph 93 is a statement of intent and not an allegation.
94. Repeat and reallege the answers to paragraphs 1- 93 as if fully set forth herein.
95. Deny the allegations contained in paragraph 95 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 as pertains to the other defendants.
96. Deny the allegations contained in paragraph 96 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 as pertains to the other defendants.
97. Deny the allegations contained in paragraph 97 as pertains to ABC RUG



CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 as pertains to the other defendants.

98. Paragraph 98 is a request for relief and not an allegation.
99. Repeat and reallege the answers to paragraphs 1- 98 as if fully set forth herein.
100. Paragraph 100 is not allegation, but a statement of law.
101. Paragraph 101 is a request for relief and not an allegation.
102. Repeat and reallege the answers to paragraphs 1- 101 as if fully set forth herein.
103. Deny the allegations contained in paragraph 103.
104. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104.
105. Deny the allegations contained in paragraph 105 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 as pertains to the other defendants.
106. Paragraph 106 is a request for relief and not an allegation.
107. Paragraph 107 is a request for relief and not an allegation.
108. Paragraph 108 is a request for relief and not an allegation.
109. Deny the allegations contained in paragraph 109 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 as pertains to the other defendants.
110. Paragraph 110 is a statement of intent and not an allegation.
111. Paragraph 111 is a statement of intent and not an allegation.
112. Repeat and reallege the answers to paragraphs 1- 111 as if fully set forth herein.
113. Deny the allegations contained in paragraph 113 as pertains to ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. Deny knowledge or

information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 as pertains to the other defendants.

114. Paragraph 114 is a request for relief and not an allegation.

115. Paragraph 115 is a request for relief and not an allegation.

116. Paragraph 116 is a request for relief and not an allegation.

#### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

117. Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. repeat and reallege paragraphs 1 through 116.

118. This court lacks subject matter jurisdiction over the Plaintiffs' claims.

119. Plaintiffs' claims are based on the Lanham Act, New York General Business Law and New York State common law.

120. Plaintiffs' have failed to allege facts sufficient to support a claim under the Lanham Act.

121. The district court does not have independent jurisdiction over claims brought under the New York General Business Law and New York State common law.

#### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

122. Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. repeat and reallege paragraphs 1 through 116.

123. Plaintiffs lack standing to bring this claim in federal court.

124. Upon information and belief, Plaintiff ABC RUG & CARPET CLEANING SERVICE CO., INC. does not own any marks registered with the United States Patent and Trademark Office which would support federal jurisdiction of its claims.

125. Upon information and belief, Plaintiff A.B.C. CARPET CO., INC. has not alleged any facts that would support its claims in federal court.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

126. Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. repeat and reallege paragraphs 1 through 116.
127. The Complaint fails to state a claim on which relief may be granted.
128. Upon information and belief, Plaintiff A.B.C. CARPET CO., INC. claims to own the registered service marks, hereinafter referred to as the ABC marks, listed below. However, the following marks are for use with retail store services featuring rugs and carpets.
- ABC CARPET& HOME, Reg. No. 2187632.
  - ABC CARPET& HOME, Reg. No. 2185854.
  - ABC CARPET& HOME, Reg. No. 2212532.
  - ABC CARPET& HOME, Reg. No. 2185853.
  - ABC, Reg. No. 2193567.
  - ABC, Reg. No. 2212531.
129. Upon information and belief, Plaintiff A.B.C. CARPET CO., INC. does not engage in carpet and rug cleaning services.
130. Upon information and belief, there is no evidence of actual confusion among consumers regarding A.B.C. CARPET CO., INC. and Defendants ABC RUG CLEANERS, INC., and NY MANHATTAN MANAGEMENT INC.
131. Upon information and belief, Plaintiff A.B.C. Carpet Co., Inc. registered the ABC marks in association with retail services and uses the ABC marks only in association with retail services.
132. Upon information and belief, A.B.C. Carpet Co., Inc. does not use the ABC marks for cleaning services.
133. Upon information and belief, there is no evidence of actual confusion among consumers regarding the services offered by Plaintiff A.B.C. CARPET CO., INC.

and the services offered by Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC.

134. Upon information and belief, Plaintiff ABC RUG & CARPET CLEANING SERVICE CO., INC. does not own any marks registered with the United States Patent and Trademark Office which would confer federal jurisdiction of its claims.
135. Upon information and belief, Plaintiffs do not own any federally registered marks for cleaning services.
136. Plaintiffs have not alleged trademark infringement of a federally registered ABC mark in association with cleaning services.
137. Plaintiffs have based all of their claims on Plaintiff A.B.C. CARPET CO., INC.'s registered ABC marks for retail services.
138. Upon information and belief, Plaintiffs do not own a federally registered mark which would support a trademark infringement claim in federal court.
139. Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. do not use their respective marks in association with retail services.
140. Defendant ABC RUG CLEANERS, INC. has not used Plaintiff A.B.C. CARPET CO., INC.'s ABC marks, or any variation of the marks, in connection with retail services.
141. Plaintiffs have not alleged that the Defendants ABC RUG CLEANERS, INC. and NY MANHATTAN MANAGEMENT INC. are using the ABC marks in association with retail services.

WHEREFORE, Defendants request that this action be dismissed with prejudice, that none of the relief sought by Plaintiffs be granted and pray that any and all additional and further relief that this Court deems appropriate be awarded to Defendants.

Dated: New York, New York  
August 21, 2008

JACOBSON & COLFIN, P.C.

By: /JEFFREY E. JACOBSON/  
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